

LOCAL COMMENT: Outing a CIA operative? Rules call for special counsel

BY JOHN CONYERS JR.

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Sorely missing in the myriad of public debate concerning the need for a special counsel to investigate the leaked name of a CIA operative is one simple fact: It's required by the law.

Although the independent counsel law expired in 1999, the Justice Department promulgated regulations that require the appointment of a special counsel under specified circumstances. Under the regulations, the attorney general is required to appoint a special counsel when (1) a "criminal investigation of a person or matter is warranted," (2) the investigation "would present a conflict of interest for the Department" and (3) "it would be in the public interest to appoint an outside special counsel to assume responsibility."

All three factors are present here.

The Justice Department has already answered the first question for us -- they have opened a criminal investigation into charges of disclosing the name of a covert agent.

Second, there is a clear conflict of interest. The Justice Department investigation is focused largely on the White House, which has already been directed to preserve all relevant records. The trail may lead to Karl Rove, who is reported to be responsible for John Ashcroft's very appointment and was a consultant to his political campaigns. Or it may involve someone else on the White House staff.

Either way, it is inconceivable that such an investigation of the office that heads our entire government could not present a conflict for a subordinate agency.

Third, it is in the public interest to appoint a special counsel.

This investigation goes to the very integrity of our federal government. If it is true that the White House condoned the outing of a CIA operative -- the wife of Joseph Wilson, former acting ambassador to Iraq -- in order to embarrass Wilson, this would undermine the justification for the Iraq war and create a political firestorm.

Only an independent probe conducted by an individual of unimpeachable credentials can assure the public that the investigation is not biased. An administration that promised "to change the tone" in Washington should not be solely concerned with whether a crime has been committed but also about the unseemly appearance of White House attempts to smear truth-telling critics.

For those who argue the "career" people can conduct the investigation, I invite them to read the various safeguards built into the special counsel regulations.

They require that the prosecutor be an outside person with a "reputation for integrity"; can seek whatever resources are necessary to pursue the case; and is not subject to the day-to-day supervision of the Department of Justice. He or she can only be fired for misconduct, dereliction of duty, incapacity or other good cause. Moreover, when the prosecutor completes his investigation, the attorney general is required to provide a written explanation of why any action proposed by the special counsel was not pursued. None of these procedural safeguards are available to protect the career employees pursuing the CIA leak absent the appointment of a special counsel.

It is also asserted that cries for special prosecutors are mere politics. But it was none other than then-Sen. John Ashcroft who in 1997 declared, "A single allegation can be most worthy of a special prosecutor. If you're abusing government property, if you're abusing your status in office, it can be a single fact that makes the difference on that."

When it comes to ethics, this is an administration that has gone to extremes to avoid independent scrutiny. Whether it is investigating the president's good friend Ken Lay or former Army Secretary Thomas White in the Enron scandal, Vice President Dick Cheney in the Halliburton case or the involvement of top Republican legislators in trading campaign contributions for legislative favors on behalf of Westar, Attorney General Ashcroft has not seen fit to open a single independent investigation.

If the president is really serious about cracking down on leaks within the White House, I would urge him to personally ask the attorney general to appoint a special counsel. There is precedent for the president himself to take such action.

Indeed, when charges were made concerning President Bill Clinton's involvement in the Whitewater land deal in 1993, he asked Attorney General Janet Reno to appoint a special prosecutor, and she complied.

Here the charge -- outing a CIA operative -- is far more serious. The law mandates no less.

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